

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6369 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge?

No

BHIL DAMABHAI NANABHAI

Versus

BHIL JAIRAM CHANDULAL

Appearance:

Shri Jitendra M. Patel, Advocate, for the
Petitioner
Shri T.H. Sompura, Asst. Govt. Pleader, for
Respondent No. 3
Rest served

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 08/04/96

ORAL JUDGEMENT

The order passed by the Deputy Collector at Dabhoi on 19th April 1980 as affirmed in revision by the order passed by the Collector of Vadodara on 31st May

1981 as further affirmed in revision by the order passed by and on behalf of the State Government (respondent No. 3 herein) on 9th April 1985 is under challenge in this petition under art. 227 of the Constitution of India. By his impugned order, the Deputy Collector at Dabhoi set aside the order passed by the Mamlatdar at Naswadi on 7th November 1978. The Mamlatdar rejected the application made by respondent No. 1 herein for entering his name in the revenue records as the cultivator of the land in question.

2. The facts giving rise to this petition move in a narrow compass. The dispute centres round one parcel of land bearing survey No. 51/1 situated at village Vadesia taluka Naswadi district Baroda (the disputed land for convenience). The petitioner was its tenant and he became its deemed purchaser under the Bombay Tenancy and Agricultural Lands Act, 1948. It appears that respondent No. 1 applied for entering his name in the revenue records as its co-owner to the one-third share on the ground that he was cultivating it. It appears that the petitioner objected to entering the name of respondent No. 1 in the revenue records qua the disputed land. Thereupon, by the order passed by the Mamlatdar at Naswadi on 7th November 1978, the application made by respondent No. 1 for entering his name in the revenue records was rejected. Its copy is at Annexure B to this petition. That aggrieved respondent No. 1 herein. He carried the matter in appeal before the Deputy Collector at Dabhoi. It came to be registered as R.T.S. Appeal No. 32 of 1979. By his order passed on 19th April 1980 in the aforesaid appeal, the Deputy Collector at Dabhoi accepted it and set aside the order passed by the Mamlatdar at Naswadi at Annexure B to this petition and ordered entering of the name of respondent No. 1 in the revenue record qua the disputed land. A copy of the aforesaid appellate order is at Annexure C to this petition. The aggrieved petitioner carried the matter in revision under Rule 108(6) of the Gujarat Land Revenue Rules, 1972 (the Rules for convenience) framed under the relevant provisions contained in the Bombay Land Revenue Code, 1879 (the Code for brief). It came to be registered as RTS Revision No. 4 of 1980. By his order passed on 31st May 1981 in the aforesaid revisional application, the Collector of Vadodara rejected it. Its copy is at Annexure D to this petition. The aggrieved petitioner invoked the revisional jurisdiction of respondent No. 3 presumably under sec. 211 of the Code. By the order passed by and on behalf of respondent No. 3 on 8th April 1985 in the revisional application, it came to be rejected. Its copy is at Annexure E to this

petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under art. 227 of the Constitution of India for questioning the correctness of the order at Annexure C to this petition as affirmed in revision by the order at Annexure D to this petition as further affirmed in revision by the order at Annexure E to this petition.

3. It is a settled principle of law that the disputed questions of title cannot be gone into in what is popularly known as the RTS proceedings arising under Chapter 10A of the Code. Respondent No. 1 wanted his name to be entered in the revenue records with respect to the disputed land on the ground that he was a co-owner to the extent of his one-third share therein and also on the ground that he was in cultivation thereof. It is thus clear that respondent No. 1 tried to establish his title to the disputed land to the extent of his one-third share therein. The authorities below were not justified in deciding the disputed question of title of respondent No. 1 herein. The revenue authorities ought to have directed respondent No. 1 to approach an appropriate forum for the purpose. In that view of the matter, the impugned orders at Annexures C, D and E to this petition cannot be sustained in law on this ground alone inasmuch as thereby the title of respondent No. 1 to the extent of his one-third share in the disputed land has come to be decided.

4. In the result, this petition is accepted. The order passed by the Deputy Collector at Dabhoi on 19th April 1980 at Annexure C to this petition as affirmed in revision by the order passed by the Collector of Vadodara on 31st May 1981 at Annexure D to this petition as further affirmed in revision by the order passed by and on behalf of the State Government on 8th April 1985 at Annexure E to this petition is quashed and set aside. Rule is accordingly made absolute with no order as to costs.
